**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 7227 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE H.K.RATHOD**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)**

**Versus**

**ISMAIEL MUSSULLA - Respondent(s)**

==========

**Appearance :**
MRS FALGUNI D PATEL for Petitioner(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,

==========

**CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**

**Date : 21/02/2006**

**ORAL JUDGMENT**

1.Heard learned Advocate, Mrs. Falguni D. Patel on behalf of the petitioner and learned Advocate,

Mr.J.S.Brahmbhatt on behalf of respondent.

2.In the present petition, the petitioner-Corporation challenged the award passed by Industrial Tribunal, Vadodara in Reference (IT) No.75 of 2000 dated 24th January 2003 wherein Industrial Tribunal, Vadodara has modified punishment order dated 30th October 1999 from stoppage of five increments with cumulative effect to three months increment without cumulative effect and directed the Corporation to pay difference of salary to the concerned workman.

3.Heard both the learned Advocates and considering the submissions made by both the learned Advocates, looking to the misconduct which has been found to be proved against the workman, according to my opinion some more punishment is required to be imposed on the workman. The reason is that Bus was local where road booking was not permissible. At the time of checking 33 passengers were travelling, out of 3 passengers were found without tickets travelling between Bachar to Atali, though

according to charge-sheet fare was collected by the workman concerned. The distance between Bachar to Atali about 3 kilometres and according to the defence of workman that before completion of 3 kilometres distance, the Bus was checked by checking staff. The checking staff has not checked Cash of the workman. The workman has not admitted the charge in departmental inquiry. The way bill was found to be open, which suggests that workman was doing road booking. Therefore, only charge which found to be proved is that within prescribed time the workman was not able to issue tickets to the concerned passengers. The charge of misappropriation was not found to be proved from the record as discussed by the Tribunal. Therefore, considering the facts and explanation given by the workman and short distance between Bachar to Atali and Rs.4/- has been recovered by the workman, according to my opinion, if the punishment order dated 30th October 1999 stoppage of applicant's five increment with cumulative effect, if it is modified to stoppage of three yearly

increments without cumulative effect, which would meet the end of justice. Looking to the financial condition of the Corporation, according to my opinion whatever the difference of salary which available because of this modification to the respondent-workman, the Corporation shall have to pay only 50% of the amount of arrears to the concerned workman. In view of above observations and direction, the present award passed by Industrial Tribunal, Vadodara in Reference (IT) No.75 of 2000 dated 24th January 2003 is modified to the effect that now the Corporation shall impose the punishment of stoppage of three increments without cumulative effect and because of said modification whatever arrears of wages is available, the workman shall have to be paid only 50% by the Corporation. Accordingly, present petition is partly allowed. Rule is made absolute to that extent. No order as to costs.

**(H.K.RATHOD,J.)**

mrpandya*